

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

ORIGINAL

In the Matter of )  
)  
Redesignation of the 17.7-19.7 GHz Frequency )  
Band, Blanket Licensing of Satellite Earth )  
Stations in the 17.7-20.2 GHz and 27.5-30.0 )  
GHz Frequency Bands, and the Allocation of )  
Additional Spectrum in the 17.3-17.8 GHz and )  
24.75-25.25 GHz Frequency Bands for )  
Broadcast Satellite-Service Use )

IB Docket No. 98-172  
RM-9005  
RM-9118

To: The Commission

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

COMMENTS OF BELL SOUTH

BellSouth Corporation ("BellSouth"), by its attorneys, hereby responds to the Commission's November 20, 1998 *Public Notice* soliciting comment on the Emergency Request filed by the Independent Cable & Telecommunications Association ("ICTA") for Immediate Relief (the "ICTA Petition") and the Petition for Interim Relief submitted by the Fixed Point-to-Point Communications Section, Wireless Communications Division of the Telecommunications Industry Association (the "TIA Petition").<sup>1</sup> For the reasons set forth below, BellSouth urges the Commission to grant the relief requested in these two submissions.

BellSouth is particularly concerned about the issue highlighted by ICTA — the interference protection rights that will be afforded to the 18.3-18.55 GHz facilities that are being proposed subsequent to the September 18, 1998 release of the *Notice of Proposed Rulemaking* in this

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<sup>1</sup> *Commission Staff Seek Comment on Pleadings Filed in IB Docket No. 98-172, Public Notice, Report No. 98-60, DA 98-2344 (Nov. 20, 1998).*

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proceeding.<sup>2</sup> At present, the 18.3-18.55 GHz band is allocated on a co-primary basis to the terrestrial Private Operational Fixed Service (“OFS”), and the Cable Television Relay Service (“CARS”). As BellSouth explained in its initial comments in response to the *NPRM*, BellSouth, like the private cable operators represented by ICTA, utilizes the entire 18.142-18.580 GHz band (which includes 18.3-18.55 GHz) in conjunction with its multichannel video programming distribution operations.<sup>3</sup> The *NPRM* proposes to reallocate 18.3-18.55 GHz -- more than one-half of the 18.142-18.580 GHz band -- to satellite services on a primary basis,<sup>4</sup> despite the facts that the 18.142-18.580 GHz band is extensively utilized by numerous multichannel video programming distributors (“MVPDs”) across the country, there is no available alternative spectrum, and the satellite industry has not demonstrated anticipated demand for its future services sufficient to justify its spectrum needs.<sup>5</sup> In addition, the *NPRM* announces a new policy (one adopted by the Commission without benefit of notice and comment), under which OFS and CARS facilities proposed in applications filed with the Commission after the September 18, 1998 release of the *NPRM* will be afforded secondary status and will be required to protect the speculative satellite facilities in the 18.3-18.55 GHz band.<sup>6</sup> In other words, the Commission has decided to disregard its existing rules that afford OFS/CARS

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<sup>2</sup> FCC 98-235 (rel. Sept. 18, 1998) [hereinafter cited as “*NPRM*”].

<sup>3</sup> See Comments of BellSouth at 5-6.

<sup>4</sup> *NPRM* at ¶29.

<sup>5</sup> See Comments of BellSouth at 5; Fixed Wireless Communications Coalition (“FWCC”) at 7; RCN Telecom Services, Inc. (“RCN”) at 5-9; ICTA at 6-10; ICTA Petition at 6-8. See also Comments of GTE at 8.

<sup>6</sup> *NPRM* at ¶40.

co-primary status in the 18.3-18.55 GHz band, and to relegate newly-proposed OFS/CARS facilities to secondary status.

This policy of denying co-primary status to OFS/CARS facilities proposed during the pendency of this proceeding is already having an adverse impact, as it has had the practical effect of discouraging MVPDs from deploying new services that are dependent upon the interference-free availability of the 18.142-18.580 GHz band. The record being developed in this proceeding makes one thing clear — terrestrial operations in this band would substantially interfere with co-channel satellite operations.<sup>7</sup> Thus, any terrestrial OFS/CARS facility that is made secondary to co-channel satellite operations almost inevitably will have to cease operations in order for the licensee to meet its obligation to protect satellite facilities. Under these circumstances, BellSouth is not inclined to introduce new multichannel video programming services to the public that depend upon the 18.142-18.580 GHz band, because of the risk of economic loss and the loss of customer good will that would necessarily accompany any cessation of a multichannel video programming service to protect satellite facilities.<sup>8</sup>

Demoting OFS/CARS facilities to secondary status is inconsistent with the Commission's long-standing effort to introduce increased competition into the MVPD marketplace. As discussed

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<sup>7</sup> See, e.g., Comments of BellSouth at 9-10; Fixed Point-to-Point Communications Section, Wireless Communications Division of the Telecommunications Industry Association ("Fixed Point-to-Point") at 11; ICTA at 5; Comsearch at 6; Teledesic at 3-4; Association of American Railroads at 6; Winstar Communications, Inc. at 7.

<sup>8</sup> BellSouth has previously demonstrated that it requires 440 MHz of contiguous spectrum to transmit the full complement of video channels necessary for it to succeed in the marketplace. See Comments of BellSouth at 5-6. Given this fact, BellSouth cannot rely upon the alternative primary spectrum allocations for terrestrial use proposed in the *NPRM* to provide any viable and immediate solutions to the secondary status policy or mitigate the attendant adverse consequences.

in its comments opposing the proposals advanced in the *NPRM*, BellSouth has been aggressively deploying a variety of video service offerings, including offerings that require unimpeded access to the 18.142-18.580 GHz band.<sup>9</sup> BellSouth's MVPD offerings meet the objectives shared by Congress and the Commission of increasing competition to entrenched wired cable operators.<sup>10</sup>

In its most recent report to Congress on the status of competition in the MVPD marketplace, the Commission has acknowledged that "[t]he cable industry's large share of the [multichannel video programming distribution] audience is a cause for concern."<sup>11</sup> As a result, Chairman Kennard noted that consumers are not provided the potential wider range of choice in programming and prices.<sup>12</sup> Chairman Kennard also recognized that, so long as widespread competition to the cable industry has not fully developed, the "loser" will be the "American public" who "must pay the higher cable prices yet . . . have few competitive choices."<sup>13</sup> BellSouth has demonstrated both a willingness and an ability to deliver competitive MVPD offerings, but it cannot do so without assurances from the Commission that OFS facilities deployed today will be entitled to operate tomorrow.

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<sup>9</sup> See Comments of BellSouth at 4.

<sup>10</sup> See Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). The legislative history indicates that a purpose of this Act is "to promote competition in the multichannel video marketplace." S. Rep. No. 102-92, 102d Cong., 2d Sess. 1 (1992), *reprinted in* 1992 U.S.C.C.A.N. 1133.

<sup>11</sup> See *In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, Fourth Annual Report*, 13 FCC Rcd 1034, at 1038-1039 (1998).

<sup>12</sup> *Id.* at 1240 (separate statement of Chairman Kennard). See also *In the Matter of Telecommunications Services Inside Wiring*, CS Docket No. 95-184, *Report and Order and Second Further Notice of Proposed Rulemaking*, 13 FCC Rcd 3659, at 3703-3704 (1997).

<sup>13</sup> 13 FCC Rcd at 1238-1239 (separate statement of Chairman Kennard).

The record in response to the *NPRM* illustrates that the Commission's proposed reallocation of the 18.3-18.55 GHz band to the satellite service on a primary basis is ill-conceived.<sup>14</sup> Yet, unless the Commission grants the relief requested by ICTA and TIA, the mere pendency of that proposal will effectively preclude the use of the 18.142-18.580 GHz band for developing competition with cable. The impact on competition of this inappropriate result will be exacerbated by the fact that the complicated technical and policy issues involved in this proceeding will inevitably lead to substantial delay before the Commission can assure BellSouth and other MVPDs access to the spectrum they need to adequately serve the public.

Curiously, the *NPRM* is completely silent as to why the Commission has adopted a policy of imposing secondary status on OFS proposals advanced during the pendency of this proceeding. ICTA has demonstrated in Attachment C to its Petition that where the Commission has taken similar actions, the Commission has sought to stem the prospect of a flood of speculative applications during the pendency of reallocation proceedings.<sup>15</sup> That concern is not present here. Given that OFS facilities must be carefully engineered and must be constructed within 18 months of the grant of authorization,<sup>16</sup> the 18.142-18.580 GHz band hardly possesses the characteristics of the services where speculation has been a problem. Indeed, the proof of this can be found in the Commission's own records. The Commission's 1996 decision to reallocate portions of the 17.7-19.7 GHz band for satellite use on a co-primary basis did not lead to a flood of speculative applications by terrestrial

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<sup>14</sup> See Comments of RCN at 4-6; ICTA at 6; Fixed Point-to-Point at 11; FWCC at 11-12; AirTouch Communications, Inc. at 7-8; Wireless Communications Association International, Inc. at 2-3.

<sup>15</sup> See ICTA Petition at Attachment C, pp. 1-2.

<sup>16</sup> 47 C.F.R. § 101.63.

interests looking to secure authorizations before satellite interests.<sup>17</sup> That being the case, there is no basis for suspecting that terrestrial interests would flood the Commission with speculative applications for OFS/CARS licenses pending any possible reallocation of the 18.3-18.55 GHz band in this proceeding.

### CONCLUSION

BellSouth has demonstrated that it is ready, willing, and able to provide consumers with a competitive alternative to the entrenched cable monopoly through a wide range of wireless and wired technologies. The 18.142-18.580 GHz band has proven critical to those efforts. However, the immediate demotion of OFS/CARS at 18.3-18.55 GHz to secondary status adversely affects the ability of BellSouth and other carriers to expand their services and thus denies to the public the benefits of increased competition in the MVPD industry.

Therefore, in the interests of promoting competition in the MVPD marketplace, the secondary status policy should be immediately rescinded, and regardless of how the Commission ultimately addresses the issues raised in the *NPRM*, all OFS/CARS facilities proposed in

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<sup>17</sup> See *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, First Report and Order and Fourth Notice of Proposed Rulemaking*, CC Docket No. 92-297, 11 FCC Rcd 19005 (1996).

applications filed between the release date of the *NPRM* and the effective date of an order terminating this proceeding should be granted co-primary status.

Respectfully submitted,

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December 21, 1998

**CERTIFICATE OF SERVICE**

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